THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 6020 of 2000

O r d e r:

Aggrieved by the action of the respondents-APSRTC in not considering the case of the petitioner for regularization of his services as Work Inspector, he filed the present writ petition.

The petitioner claims to have been appointed as NMR Technical Maistry with the respondents-APSRTC on 20.06.1992. The petitioner states that as per Circular in Lr. No. CE2/232(192)/89-PD-I, dated 10.01.1990, issued by the respondents-APSRTC clarifying Circular No. PD-163/89, dated 20.12.1989, those persons employed by the respondents as contract or casual labour in the Civil Engineering Department, and completed more than 240 days of continuous service in a year, are entitled for regularization. The petitioner states that he completed more than 240 days of continuous service in a year with the respondents, and when his case for absorption was not considered, he filed W.P.
No. 1892 of 1996, which by order dated 27.03.1996 was disposed of directing the respondents to consider his case for regularization. When his case was rejected by the respondents vide orders dated 06.06.1996, he filed another writ petition in W.P. No. 11839 of 1996, and the same by order dated 13.11.1997 was disposed of by a Division Bench of this Court directing the respondents to consider the representation of the petitioner for absorption. The respondents having considered the representation, vide orders dated 29.06.1998 rejected the same. Hence he filed the present writ petition.

Heard the learned counsel for the petitioner and the learned counsel for the respondents-APSRTC.

The learned counsel for the petitioner submits that the petitioner completed more than 240 days of continuous service in a year with the respondents, and as per the circulars of the respondents, the petitioner is entitled to regularization of his services, but the action of the respondents in rejecting his claim for regularization is

illegal and arbitrary, and more so when the Division Bench of this Court in W.P. No. 11839 of 1996, dated 13.11.1997 had held that the petitioner had worked for more than 4 years 11 months. He submits that the action of the respondents in rejecting the case of the petitioner for regularization, while considering the cases of the persons who are much junior to him, is discriminatory.

The learned Standing Counsel for the respondents-APSRTC while reiterating the averments of the counter affidavit submitted that the petitioner was employed through a contractor, and at no point of time, he was employed by the respondents-APSRTC. He submitted that as per the circulars, persons who worked as casual labour (Drivers/Conductors) with the respondents for 60 days and subsequently with the contractor for 240 days and those working as on 18.02.1993, alone are entitled for absorption, subject to their satisfying the eligibility criteria. There is no post of Work Inspector. The petitioner was engaged though a contractor in the Civil Engineering Department, he was not engaged by the respondents-APSRTC, and therefore, he cannot equate himself to be on par with persons engaged by the respondents. He denied that persons junior to the petitioner were regularized. He submitted that the writ petition seeking the relief of regularization of services is not maintainable, and the proper remedy for the petitioner is to approach the Industrial Tribunal and establish his case that he worked for more than 240 days continuously in a year with the respondents.

When the case of the petitioner for regularization was rejected by the respondents vide orders dated 06.06.1996, he filed writ petition in W.P. No. 11839 of 1996, and a Division Bench of this Court upon hearing the counsel for both the parties, by order dated 13.11.1997 disposed of the writ petition directing the petitioner to make a representation to the respondents, who upon its receipt were directed to consider and dispose of the same within a period of two months in accordance with law. In pursuance of the said order, the petitioner made representation, but it was rejected by the respondents.

Though the respondents contend that the petitioner was not employed by them and that he had not worked for more than 240 days in a year with them, and as such, he is not entitled to regularization of his services, the fact remains that this Court while disposing of the writ petition in W.P. No. 11839 of 1996, dated 13.11.1997, has recorded a finding that the respondents did not dispute the fact that the petitioner has worked in the respondent-Corporation for more than 4 years 11

months as Work Inspector even though he was appointed as N.M.R. Technical Maistry and even though he worked regularly for a period of more than 240 days, the respondents have not regularized his services. This finding recorded by the Division Bench of the High Court, has attained finality for the respondents-APSRTC have neither filed any review nor appeal assailing the said finding. When there is a finding by the Division Bench of this Court that the respondents did not dispute that the petitioner has worked for more 4 years 11 months and that he had completed more than 240 days, I fail to understand how the respondents-APSRTC can take a stand contrary to their admission and finding by the Court that the petitioner had completed more than 240 days of service. The respondents-APSRTC cannot be allowed to approbate and reprobate. However, having regard to the finding by the Division Bench of this Court, which attained finality, and having regard to the stand taken by the respondents-APSRTC that the post of Work Inspector is not available with them, I had called upon the Standing Counsel for the respondents-APSRTC to enquire from the authorities of the respondent-APSRTC whether the petitioner, if not as Work Inspector, could be accommodated in any other suitable job. But the Standing Counsel for the respondents-APSRTC having taken several adjournments, reported that he has been informed by the authorities of the respondent-Corporation that the services of the petitioner cannot be regularized in any suitable post.

Though an employee seeking regularization has to approach the Industrial Tribunal under Section 11-A of the Industrial Disputes Act, 1947, as observed by the Supreme Court in **ONGC Ltd. v. Shyamlal Chandra Bhowmik**, and prove that he had worked for more than 240 days continuously in a year, but having regard to the finding recorded by the Division Bench of this Court in its judgment in W.P. No. 11839 of 1996, dated 13.11.1997 to the effect that the petitioner had worked for more than 240 days, which fact was not disputed by the respondents-APSRTC, had attained finality, I am of the considered opinion that it would not be proper for this Court to relegate the petitioner to the Industrial Tribunal to prove that he had worked for more than 240 days, and more so when the respondents in W.P. No. 11839 of 1996 did not dispute the fact that the petitioner worked for more than 240 days continuously. Inasmuch as the respondents despite the above finding, which attained finality, have refused to regularize the service of the petitioner, this Court has no other option, but to allow the writ petition.

Hence the writ petition is allowed. The respondents-APSRTC are directed to

regularize the services of the petitioner in any suitable post with all consequential benefits in terms of the circulars governing the regularization of services of employees, as referred to above, within a period of one month from the date of receipt of a copy of this order. No costs.

N.V. RAMANA, J.

Date: 20th February, 2006.

KSR